Supreme Court, U.S.
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No. 98-1635

IN THE
Supreme Court of the United States

JAMES HAYDEN,
Petitioner,

v.

CONSOLIDATED RAIL CORPORATION,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

CARTER G. PHILLIPS *
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000
Counsel for Respondent

* Counsel of Record

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QUESTION PRESENTED

Whether the court of appeals correctly held that this Court's decision in *Consolidated Rail Corp.* v. *Gottshall*, 512 U.S. 532, 558 (1994), bars petitioner's claim under the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 1, *et seq.*, because his complaint was that he had been given "too much—not too dangerous—work to do."

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, respondent states the following: Consolidated Rail Corporation has no subsidiaries. It is a wholly owned subsidiary of Conrail, Inc.

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RESPONDENT'S BRIEF IN OPPOSITION

Consolidated Rail Corporation, respondent in this matter, hereby opposes the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit in this case.

STATEMENT

1. Petitioner James Hayden was first employed as a conductor for respondent in 1963. Pet. App. 4a. Since 1983 his home base has been in Toledo, Ohio.

In 1973, petitioner suffered his first heart attack. He reported the problem to respondent and took off work for six months. At that time respondent arranged to have petitioner examined by a physician who authorized petitioner to return to work. *Id.* at 11a. Petitioner suffered a second heart problem in 1975 and after a period of recovery, he was once again cleared to return to work. *Id.* In 1993, petitioner had another heart attack, which is the basis for his claims against respondent in this case. *Id.* at 5a. Prior to that incident neither petitioner's personal physician nor respondent's physician had imposed any "restrictions or limitations" on his work activities. Since the incident petitioner has not worked for respondent.

Prior to his most recent heart attack, petitioner allowed himself to be placed on the "conductor's extra list" by respondent. *Id.* at 4a. Because of his seniority this was a choice firmly within his control under the collective bargaining agreement. Employees on this list could be called for extra work assignments on a rotating basis. Petitioner was selected from the list more often than other conductors because he generally was willing and available to work extra shifts. *Id.*

2. After suffering his heart attack in 1993, which occurred 17 years after his second incident, petitioner filed suit against respondent in the United States District Court for the Northern District of Ohio, seeking recovery under the FELA. He alleged that respondent "negligently caused his heart attack by requiring him to work an 'inordinate and excessive' number of hours." Pet. App. 5a.

The district court granted respondent's motion for summary judgment. The court characterized petitioner's claim as alleging "that the cumulative effect of excessive duties and hours of work created a stressful environment which caused the heart attack." *Id.* at 19a. This claim,

the district court held, is indistinguishable from the claims of the employee in the *Carlisle* case that was a companion to this Court's decision in *Consolidated Rail Corp.* v. *Gottshall,* 512 U.S. 532, 558 (1994). Carlisle had asserted that he had suffered nausea and insomnia due to overwork. Pet. App. 19a, quoting *Szymanski* v. *Columbia Trans. Co.*, No. 93 CV 7423, 1995 WL 329407, at *3 (N.D. Ohio 1995), *aff'd,* 154 F.3d 591 (6th Cir. 1998) (en banc). In the view of the district court, the holding of this Court in *Gottshall* that Carlisle's suit did not state a claim under the FELA required dismissal of this lawsuit as well. *Id.* at 19a ("this Court cannot find a distinction from the result in the *Carlisle* case and that which it must reach in this case").

3. A divided panel of the court of appeals reversed and remanded. Pet. App. 3a-8a. Relying upon its prior decision in *Szymanski* v. *Columbia Transp. Co.*, 107 F.3d 371, 371 (6th Cir. 1997), which was later overturned by that court *en banc*, the panel majority held that heart attacks "are compensable under the FELA when they are negligently caused by physical stress or by extraordinary non-physical stress." Pet. App. 7a. In this case there was a genuine question as to whether respondent "negligently subjected [petitioner] to extraordinary workplace stress." *Id.* at 8a.

Judge Boggs dissented. He described petitioner's claim as involving "a quintessential case of 'too much work,' " which he argued is not actionable under the FELA. *Id.* at 8a. Judge Boggs also opined that petitioner "cannot prove negligence" because the ultimate decision to work hard was petitioner's. *Id.* at 8a-9a.

After the Sixth Circuit reheard its decision in *Szymanski* and held that *Gottshall* forecloses claims for injuries based on non-physical, employment-related stress, the panel

granted rehearing in the instant case as well. The panel then vacated its prior decision and affirmed the district court on the basis of the *en banc* decision in *Szymanski*. *Id.* at 2a.

REASONS FOR DENYING THE PETITION

The only question presented in this case is whether the Court's decision in *Gottshall* bars this lawsuit, which seeks recovery for a heart attack allegedly caused by workplace stress. The language in *Gottshall* on its face undermines petitioner's claim. Certainly, there is no inconsistency between *Gottshall* and the holding below. Moreover, petitioner does not claim a conflict among the courts of appeals or state supreme courts on this issue. Nor is the question of recovery for heart attacks arising out of workplace conditions a matter of particular importance. In the more than 100 years since the FELA was enacted, there have been just a handful of reported cases of any kind involving heart attacks, and in almost all of them, there was some kind of physical injury or threat of harm that caused the problem. In sum, there is no reason for further review of the decision of the Sixth Circuit in this case.

1. The "usual" elements of a FELA claim are "breach of a duty of care, . . . injury, and causation." *Consolidated Rail Corp.* v. *Gottshall*, 512 U.S. 532, 538 (1994). Petitioner devotes all of his attention to arguing that his heart attack is a compensable injury (Pet. 12-15) and that the work conditions were unreasonable and caused his injury (*id.* at 16-20). The fatal flaw in his analysis is that it completely ignores the relevant holding of this Court in *Gottshall*, which is that FELA does not "impose a duty to avoid creating a stressful work environment." 512 U.S. at 554. Thus, his effort to establish injury and

causation, even if it had merit, would still not be sufficient to allow this lawsuit to go forward under that portion of *Gottshall* that dismissed Carlisle's claims.

As Judge Boggs' opinion accurately explained, petitioner's "only complaint is explicitly the number of hours that he had worked, a quintessential case of 'too much work.' " Pet. App. 8a. Of course, this is precisely what this Court said cannot serve as the basis for imposing liability on an employer under the FELA. As the Court held, it would not take "the radical step of reading FELA as compensating for stress arising in the ordinary course of employment." *Gottshall*, 512 U.S. at 558.[1] Thus, like Mr. Carlisle, petitioner's assertion that "he 'had been given too much . . . work to do,' " *id.*, quoting *Lancaster* v. *Norfolk and W. Ry. Co.*, 773 F.2d 807, 813 (7th Cir. 1985), will not suffice to state a FELA claim, regardless of whether petitioner could satisfy the other elements of such a claim. See *Crown* v. *Union Pacific R.R. Co.*, 162 F.3d 984, 985 (8th Cir. 1998) (FELA does not " 'impose a duty to avoid creating a stressful work environment' ") (citation omitted). Thus, review by this Court of its unambiguous holding in *Gottshall* is wholly unwarranted.

2. Even on its own terms, petitioner's arguments would not support certiorari in this case. Petitioner notes that courts of appeals have permitted recovery for heart at-

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[1] Petitioner argues that *Gottshall*'s holding should be limited to claims for negligent infliction of emotional distress. He then argues that because he never sought recovery under that theory, the ruling in *Gottshall* does not apply. But the relevant portion of *Gottshall* is not merely a pleading rule. Instead, this Court categorically refused to "read[] FELA as compensating for stress arising in the ordinary course of employment." *Gottshall*, 512 U.S. at 558. Nothing in that opinion restricts it to a particular theory of recovery.

tacks in FELA cases, and then intimates that the Sixth Circuit's ruling here is in some sense inconsistent with those decisions. But there is no case that supports a ruling that work-related stress allegedly causing a heart attack is actionable under FELA. The three cases relied upon by petitioner involved vastly different circumstances. *Williams* v. *Atlantic Coast Line R.R. Co.*, 190 F.2d 744, 746-47 (5th Cir. 1951), involved an employee who drowned while fixing track beside a pool of water. In *Miller v. Elgin, Joliet & Eastern Ry. Co.*, 177 F.2d 224, 225 (7th Cir. 1949), an employee suffered a heart attack after enhaling smoke and flames from a fire in the workplace. Finally, in *Stewart* v. *Baltimore & O.R. Co.*, 137 F.2d 527, 528 (2d Cir. 1943), the employee suffered a stroke after being required physically to overexert himself in the performance of his job assignment. None of these cases remotely suggests that mere stress from overwork provides a basis for bringing a suit under FELA to recover for a heart attack.[2]

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[2] Petitioner also relies (Pet. 21-23) upon one district court decision and one intermediate state appellate court decision to support his argument. *Walsh* v. *Consolidated Rail Corp.*, 937 F. Supp. 380 (E.D. Pa. 1996); *Bailey* v. *Norfolk & W. Ry. Co.*, No. 70194, 1997 WL 124153 (Mo. Ct. App. Mar. 18, 1997). Obviously, a conflict between such decisions and the one here provides no reason for the Court to grant certiorari. *See* Robert Stern et al., *Supreme Court Practice* 178-80 (7th ed. 1993). Moreover, those decisions, even if correct, do not involve the situation posed in this case. This is a mere "stressful work environment" claim. The court in *Walsh* acknowledged that "FELA does not provide relief for victims of routine, job related stress." 937 F. Supp. at 389. Similarly, the court in *Bailey* emphasized the extreme nature of the sleep deprivation created by the plaintiff's workplace that his expert physicians testified had caused both serious gastric problems and a heart condition. Pet. App. 50a. Whether the duty to the employee under FELA extends to this extreme situation is doubtful, but it certainly provides no basis for a serious argument that petitioner's mundane claim here is actionable after *Gottshall*.

In sum, petitioner's claim seeks review of the scope of this Court's holding in *Gottshall* that FELA provides no basis for recovery from injuries allegedly caused by "too much—not too dangerous—work to do." There is no conflict in the circuits on that issue and, given the clarity of the Court's holding, it is very unlikely that there ever will be. Certainly, there is no reason for the Court to consider the issue in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

CARTER G. PHILLIPS *
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000
Counsel for Respondent

* Counsel of Record

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